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JAN 30 2004

OFFICE OF PETITIONS

In re Application of:

Frank

Filed: 26 October, 2000

Application No. 09/696,812

Docket No.: 600.1095

ON PETITION

This is a decision on the petition filed herein on 17 December, 2003, under 37 C.F.R. §1.137(b) to revive the above-identified application as abandoned due to unintentional delay.

For the reasons set forth below, the petition is **DISMISSED as moot**.

BACKGROUND

A review of the record reveals:

- Petitioner failed to respond timely and properly to the final Office action mailed on 26 August, 2002, with reply due (absent extension of time) on or before 26 November, 2002;
- over a 22 November, 2002, certificate of mail (on the transmittal form) Petitioner filed an after-final amendment (see: 37 C.F.R. §1.116) on 29 November, 2002--however, the Examiner deemed the amendment not a proper reply¹ to the final Office action, refused to enter it, and mailed an Advisory Action on 19 December, 2002, so notifying Petitioner;
- the instant application went abandoned after midnight 26 November, 2002;
- no Notice of Abandonment was mailed before the original petition was filed on 30 May, 2003, and that petition to revive under 37(b)37 C.F.R. §1.137(a), and due to the

¹ The proper response to the final Office action (see: Fn. 1, item (1); MPEP 711.03(c)) must be in the form of: (a) an amendment *prima facie* placing the application in condition for allowance; (b) a Notice of Appeal; or (c) a Continuing Application or Request for Continued Examination (RCE) (with fee and submission) under 37 C.F.R. §1.114.

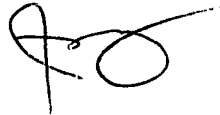
allegations of timely filing also treated under 37 C.F.R. §1.181 as a request to withdraw the holding of abandonment, and the petition(s) were dismissed on 9 July, 2003;

- a petition under 37 C.F.R. §1.137(b) was filed on 11 September, 2003, and granted on 22 December, 2003, and therein Petitioner was notified that: **Petitioner's brief, compliant with the regulations at 37 C.F.R. §1.192, is due within two (2) months of the date of that decision.**

Thus, the application was revived and the instant petition is **dismissed as moot.**

The instant application is forwarded to Technology Center 2800 to await the filing of Petitioner's Brief (with fee) on appeal.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9199.



John J. Gillon, Jr.
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